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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 929. October Term, 1944.

PAULINE E. BARRY, Administratrix of the ESTATE OF RALPH E. BARRY, Deceased,
Petitioner,

vs.

READING COMPANY,
Respondent.

PETITION FOR REHEARING OR RECONSIDERATION OF PETITION FOR WRIT OF CERTIORARI.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now, Pauline E. Barry, Administratrix of the Estate of Ralph E. Barry, Deceased, and respectfully petitions this Honorable Court for a rehearing and reconsideration of her petition for a writ of certiorari to review the opinions and judgment of the United States Circuit Court of Appeals for the Third Circuit, her said petition having been denied by this Honorable Court on April 2, 1945, for the following reasons:

1. Your petitioner in this cause has been denied the fundamental and constitutional right to have presented to and passed upon by a jury her claim that the general negligence of the defendant-respondent contributed to the death of her decedent and was therefore cognizable under the Federal Employers' Liability Acts.

2. In addition to the defendant's violations of the Safety Appliance Act and regulations promulgated thereunder, the evidence presented proved general negligence of defendant's employees in violating the custom and practice to keep a lookout and in cutting two drafts of cars in too close proximity to each other.

3. The trial court refused to permit the jury to consider this evidence as an independent basis for recovery even after a specific request was made at the end of the charge, while the jury was still in the box. The trial judge, having destroyed petitioner's right of recovery under the Safety Appliance Act by admitting inadmissible testimony, manifestly charged the petitioner out of Court by refusing to permit the jury to consider the issue of general negligence under the Federal Employers' Liability Acts.

4. The Circuit Court of Appeals completely ignored this error when it entered its first judgment, and limited the rehearing subsequently granted to a consideration of the question raised relating to the construction of the Safety Appliance Act.

5. Your petitioner, the widow of this decedent, and her child, have had no opportunity allowed or granted them in any court to litigate this issue, a right which she believes to belong to her constitutionally and fundamentally under the law.

Wherefore your petitioner respectfully prays that this Honorable Court grant a rehearing or reconsider her petition for a writ of certiorari in this cause.

Respectfully submitted,

MILFORD J. MEYER,
Counsel for Petitioner.

SAMUEL SHAPIRO,
HARRY G. FUERST,
Of Counsel.